

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE CIVIL JURISDICTION

FIRST APPEAL NO.828 OF 1995

1. Shamrao Nanaji Vanjare;
2. Sau.Gangubai Shamrao Vanjare;
3. Smt.Alka Ravindra Vanjare;
4. Miss.Kanaka Ravindra Vanjare  
(original applicants)

Appellants

vs.

1. Pimpri Chinchwad Municipal  
Transport, Pune.
2. Driver Shri Rajaram Ganpat Devkare;
3. The Branch Manager, The New India  
Insurance Co.Ltd., Pune.  
(Original Opponents)

Respondents

Mr.Vivek Salunke i/b.Mr.Prafulla B. Shah for the  
appellants.

Mr.D.R.More for respondents 1 & 2.

**CORAM : ANOOP V. MOHTA,J.**

**DATED : 18th July, 2007**

**ORAL JUDGMENT:**

The appellants who are the original claimants, by this appeal have challenged the impugned order dated 8.3.1995 passed by the Motor Accidents Claims Tribunal, Pune whereby their claim petition is dismissed in toto. The Tribunal, after considering the material placed on record came to the clear finding that the claimants proved that the driver of the vehicle in question was rash and negligent in driving the said vehicle and

thereby caused accident that resulted into the death of one Ravindra. However, considering the provisions of Section 53 of the Employees State Insurance Act, 1948 (ESI Act) the total claim was rejected by observing as under:

"13. In the light of above discussion I am inclined to dismiss the claim of the petitioners. In the event there was no bar under section 53 of E.S.I. Act I would have proceeded further to determine the compensation to be awarded to the petitioners. The petitioner no.3 was about 20 years of age at the time of accident. She is widow of deceased and had minor child of 4 months old. Besides the deceased had also left behind him his father and mother who are petitioner nos. 4 and 5. They were 52 years & 45 years of age respectively at the time of accident. The deceased was getting Rs.826.95 p.m. as per pay slip of August, 1987. I would have, therefore, assessed dependency at Rs.600 p.m. with multiplier of 20 years purchase considering the age of widow. I have taken into consideration other factors including the one of uncertainties of life. The amount of the basis would have come to Rs.1,44,000. Besides some compensation could be granted for loss of consortium and loss of love and affection. Hence had there been no bar of section 53 of E.S.I. Act I would have granted total Rs.1,50,000 towards compensation, and deducted some amount from the

lump-sum payment above, in view of the fact that the widow is getting pension.

14. Whatever it be the above discussion regarding quantum is merely academic. As I have held above there is absolute bar under section 53 of E.S.I. Act and as such claim made by the petitioner, is to be rejected. I therefore hold that the petitioners are not entitled to compensation as claimed by them. Hence I answer Issue no.3 in the negative and Issue No.4 as does not arise."

2. The learned counsel for the respondent has further relied upon decision of the Supreme Court in **Western India Plywood Limited vs. P. Ashokan**, reported in **AIR 1997 SC 3883**, whereby based on Sections 53 and 61 of the ESI Act, has observed as under:

"11. In view of the aforesaid observations in Trehan's case (1996 AIR SCW 2375), with which we respectfully agree, it is clear that the respondent could not make a claim for damages. Section 53 disentitles an employee who has suffered an employment injury from receiving or recovering compensation or damages under the Workmen's Compensation Act or any other law for the time being in force or otherwise. The use of the expression "or otherwise" would clearly indicate that this section is not limited to ousting the relief claimed only under any statute but the wordings of the section are such that an insured person would not be entitled to make a claim in Torts which has the force of law under the ESI Act. Even though the ESI Act is a beneficial legislation the Legislature had thought it fit to prohibit an insured person from receiving or recovering compensation or damages under any other law,

including Torts, in cases where the injury had been sustained by him is an employment injury."

3. In view of this, there is no substance in the submission as raised by the learned counsel for the appellant as there is a clear finding in favour of the accident and therefore, the Tribunal should have granted the compensation. The bar as created squarely covers the case of the respondent. The finding, therefore, as given is within the frame work of law and record need no interference.

4. The appeal is therefore dismissed. No costs.

**[ANOOP V. MOHTA,J.]**